

Nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. See 86 Ill. Adm. Code Section 130.2070. (This is a GIL).

August 28, 2000

Dear Xxxxx:

This is in response to your letter dated April 28, 2000. We regret the delay in responding to your request. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY, which sells food and related products to conventional and fast food restaurants, is in the process of updating all our tax information files and would like to request a current copy of the sales and use tax regulations governing sales to restaurants.

COMPANY currently has sales in numerous states, and understandably some tax laws vary from state to state. To confirm that COMPANY is in compliance, we are requesting specific answers to the taxability of certain items sold to restaurants. The State's response should answer the taxability the following items:

Bags	Chopsticks
Cups	Toothpicks
Lids	Skewers
Napkins	Stirrers
Straws	Paper Placemats
Plastic Silverware	Paper Tray Covers
Containers / Plates	Aluminum Foil
Drink Carriers	Basket Liners / Wax Paper

At this time COMPANY will also like to request updated information on any special taxes that may be applicable to restaurant sales (e.g. soft drink taxes or special food taxes). If there are any questions regarding this request, I can be reached at #####

For your information and reference please find enclosed a copy of the Department's regulation governing "Sales of Containers, Wrapping and Packing Materials and Related Products", 86 Ill. Adm. Code 130.2070. As stated in subsection (b)(3) of the regulations, nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. By way of example, items sold for resale include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages.

It must be emphasized, however, that food vendors purchasing items used in conducting their business and which are not transferred to the customer fully incur Use Tax as the end users of the items sold. Such items include, but are not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles.

It is unclear from your letter what taxable transaction you are referring to when you request updated information on special taxes applicable to restaurant sales. Please note that local governments have the authority to impose and collect a variety of taxes on restaurant sales. The Department does not administer such taxes. See, 65 ILCS 5/8-11-6a. Additionally, certain home rule municipalities may impose a tax on persons engaged in the business of selling fountain soft drinks at retail at a rate not to exceed 9% of the cost price. It is the supplier selling the soft drink syrup or concentrate to the retailer that collects and remits the tax to the municipality. The municipality imposing the tax, rather than the Department, administers, enforces and collects the tax. See, 65 ILCS 5/8-11-6b(c).

I hope this information is helpful. You may write to us again providing more detailed information regarding your inquiry into special taxes applicable to restaurant sales if this letter has failed to address your question. The Department of Revenue also maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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